

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WENDY J LAHUE
Claimant

APPEAL NO. 23A-UI-10680-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL COLLEGE
Employer

**OC: 05/14/23
Claimant: Respondent (4R)**

Iowa Code Section 96.6-2 - Timeliness of Protest
Iowa Code section 96.7(a)(1) and (c) – Government Reimbursable Employer
Iowa Code section 96.7(8)(b)(4) – Appeal from Notice of Reimbursable Benefit Charges

STATEMENT OF THE CASE:

On November 10, 2023, the employer filed an appeal from the October 15, 2023 Notice of Reimbursable Benefit Charges that included a \$2,456.00 charge for benefits paid to the claimant during the quarter that ended September 30, 2023. After due notice was issued, a hearing was held on December 1, 2023. Wendy Lahue (claimant) participated. Jill Anderson represented the employer and presented additional testimony through Carol Nielsen. Exhibits 2 through 6 were received into evidence. There was not Exhibit ~1. The administrative law judge took official notice of following agency administrative records: NMRO, DBRO, the May 19, 2023 SIDES notice of claim and response, the July 15, 2023 Notice of Reimbursable Benefit Charges, and the October 15, 2023 Notice of Reimbursable Benefit Charges.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether the employer's appeal from the Notice of Reimbursable Benefit Charges was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Wendy Lahue (claimant) established an original claim for benefits that was effective May 14, 2023. Central College is the sole base period employer.

The employer has elected to receive electronic notice of claims via SIDES. On May 19, 2023, Iowa Workforce Development issued a notice of claim to the employer via SIDES and included a May 30, 2023 response deadline. The employer filed a response via SIDES on May 19, 2023. In the SIDES response, the employer reported that the claimant is employed as a baker, that the claimant was temporarily laid off effective May 12, 2023 and that the claimant was to be recalled to the employment effective June 1, 2023.

During the second quarter of 2023, IWD paid the claimant \$2,396.00 in benefits for six weeks between May 14, 2023 and June 24, 2023.

On July 15, 2023, IWD mailed a Notice of Reimbursable Benefit Charges to the employer that included a \$2,396.00 charge to the employer's account for benefits paid to the claimant during the calendar quarter that ended June 30, 2023. The weight of the evidence indicates the Notice of Reimbursable Benefit Charges was delivered to the employer's address of record in a timely manner. The notice included a statement of appeal rights:

If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 15 days after the date of the mailing of this statement.

The employer did not challenge the July 15, 2023 Notice of Reimbursable Benefit Charges.

During the third quarter of 2023, IWD paid the claimant \$2,456.00 in benefits for eight weeks between June 25, 2023 and August 19, 2023.

On October 15, 2023, IWD mailed a Notice of Reimbursable Benefit Charges to the employer that included a \$2,456.00 charge to the employer's account for benefits paid to the claimant during the calendar quarter that ended September 30, 2023. The Notice of Reimbursable Benefit Charges was delivered to the employer's address of record in a timely manner.

The notice included a statement of appeal rights:

If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 15 days after the date of the mailing of this statement.

The appeal rights statement included instructions for filing an appeal and provided a fax number, email address and mailing address for that purpose. The 15th day after the mailing date of the Notice was October 30, 2023.

On November 1, 2023, the employer sent an email to IWD Tax Bureau requesting more information regarding the charge to the employer's account.

On November 8, 2023, IWD responded the employer did not protest the claim in response to the notice of claim, the employer would need to appeal the Notice of Reimbursable Benefit Charges to challenge the number of weeks the claimant claimed benefits.

On November 9, 2023, the employer sent an email message to IWD Tax Bureau. The employer explained that it had not protested the claimant's eligibility for benefits for the period of May 12, 2023 through June 1, 2023. The employer asserted that the claimant thereafter restricted her availability for work despite the employer having her regular hours available.

On November 10, 2023, the employer emailed an appeal to the Appeals Bureau. The Appeals Bureau received the appeal on November 10, 2023.

On October 11, 2023, IWD Integrity Bureau had mailed a Request of Wage Records to the employer as part of an audit of the claimant's wages for the period of May 14, 2023 through July 1, 2023. The Request of Wage Records requested information regarding the number of hours worked and the gross wages earned for each of the seven weeks between May 14, 2023 and July 1, 2023. The employer responded to the Request of Wage Records on October 24, 2023.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

- (2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.
 - a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.
 - b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

- (1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:
 - a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

- b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
- c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

Iowa Code section 96.7(a)(1) and (c) provides as follows:

7. Financing benefits paid to employees of governmental entities.

a. (1) A governmental entity which is an employer under this chapter shall pay benefits in a manner provided for a reimbursable employer unless the governmental entity elects to make contributions as a contributory employer. ...

....

c. For the purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

Iowa Code section 96.7(8)(b)(4) provides:

8. Financing benefits paid to employees of nonprofit organizations.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, within thirty days after the mailing of the notification, the nonprofit organization appeals to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing, and the employer and the individual shall receive notice of the time and place of the hearing.

The employer received the May 19, 2023 SIDES Notice of Claim and provided a timely response to the notice of claim. In the employer's response, the employer indicated the claimant was temporarily laid off effective May 12, 2023 and that would be recalled on June 1, 2023. At the time the employer filed its May 19, 2023 response, there was no reasonable basis for the employer to address the period beyond the June 1, 2023 return-to-work date. Nor was there a reasonable basis at that time for IWD to expect or require the employer to address the period beyond June 1, 2023. The employer's initial acquiescence in assessment for benefits for the period of May 14, 2023 through the benefit week that ended June 3, 2023 did not preclude the employer from challenging assessment for benefits paid for the period beyond the benefit week that ended June 3, 2023.

The employer's first notice that the claimant had received benefits for the period beyond the June 1, 2023 return-to-work date was the July 15, 2023, Notice of Reimbursable Benefit Charges that included a charge to the employer's account for benefits paid to the claimant through June 30, 2023, the end of the second calendar quarter. The weight of the evidence indicates the employer received the July 15, 2023 Notice in a timely manner, but did not appeal the July 15, 2023 Notice within 15 days of the mailing date. Accordingly, the employer failed to preserve the right to challenge the assessment for benefits paid to the claimant during the quarter that ended June 30, 2023. The employer's November 10, 2023 appeal is untimely as it relates to the July 15, 2023 Notice of Reimbursable Charges.

The October 15, 2023 Notice of Reimbursable Benefit Charges was not the employer's first notice that the claimant had received benefits for the period beyond the June 1, 2023 return-to-work date. Even it had been the first notice, the employer received the Notice in a timely manner but did not file a timely appeal from the Notice by the October 30, 2023 deadline. The employer's first contact with IWD regarding the October 15, 2023 Notice was the employer's November 1, 2023 inquiry. The appeal from the statement of charges was not filed until November 10, 2023.

The July 15, 2023 Notice of Reimbursable Benefit Charges and the October 15, 2023 Notice of Reimbursable Charges remain in effect.

But that ruling does not preclude the employer from raising the issues of whether the claimant was able for work, available for work, temporarily and/or partially laid off, or subject to the between-academic-terms disqualification during the period between June 4, 2023 and August 19, 2023. Accordingly, this matter will be remanded to IWD Benefits Bureau so that those issues may be addressed.

DECISION:

This matter is MODIFIED in favor of the employer/appellant as follows: The employer received and responded to the May 19, 2023 notice of claim in a timely manner. Though the employer did not challenge assessment for benefits for the period of May 14, 2023 through the June 1, 2023 return-to-work date, effectively through the benefit week that ended June 3, 2023, this did not preclude the employer from challenging the claimant's eligibility for benefits or assessment for benefits paid for the period beyond the June 1, 2023 return to work date, effectively the period beginning June 4, 2023.

The employer did not file a timely appeal from the July 15, 2023 Notice of Reimbursable Benefit Charges regarding benefits paid through June 30, 2023 or from the October 15, 2023 Notice of Reimbursable Benefit Charges regarding benefits paid through September 30, 2023. Accordingly, the July 15, 2023 Notice of Reimbursable Benefit Charges and the October 15, 2023 Notice of Reimbursable Charges remain in effect.

But this ruling regarding whether the employer's account may be assessed does not preclude the employer from raising the issues of whether the claimant was able for work, available for work, temporarily and/or partially laid off, or subject to the between-academic-terms disqualification during the period between June 4, 2023 and August 19, 2023. Accordingly, this matter will be remanded to IWD Benefits Bureau so that those issues may be addressed.

REMAND:

This matter is REMANDED to IWD Benefits Bureau for a determination of whether the claimant was able for work, available for work, temporarily and/or partially laid off, and/or subject to the between-academic-terms disqualification during the period between June 4, 2023 and August 19, 2023.



James E. Timberland
Administrative Law Judge

December 18, 2023
Decision Dated and Mailed

scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.